

Case Number: 22-10964MG

United States Bankruptcy Court Southern District of New York

Re: Celsius Chapter 11 Case No. [22-10964 (MG)]

Joinder to Objection to Plan Confirmation by David Schneider, Pro Se Creditor, Docket #3547

September 27, 2023

To Judge Martin Glenn:

I, Michael D Windom, a party involved in the above-mentioned Chapter 11 case as a member of Class 2 and Class 5, hereby submit this Joinder in support of the motion filed by David Schneider, objecting to plan confirmation. I support the Objection in whole, but particularly Schneider's assertions "that the restructuring/reorganization proposal violates his fundamental rights of liberty and individual sovereignty", and if confirmed "would violate his constitutionally protected rights set forth in the First, Fifth, Thirteenth and Fourteenth Amendments" of the US Constitution.

Legal Analysis:

Although my personal research on probable violations of the US Constitution is far less sophisticated than Schneider's, I would like to call the Court's attention to the Thirteenth Amendment to the US Constitution, Section 1:

"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Further, I would call the Court's attention to **22 USC 7102(8)B** for the general codified definition of **"involuntary servitude"**:

(8) INVOLUNTARY SERVITUDE The term "involuntary servitude" includes a condition of servitude induced by means of—

(A)

any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or

(B)

the abuse or threatened abuse of the legal process.

Further, I would call the Court's attention to the definition of **"abuse or threatened abuse of the legal process" per 22 USC 7102 (1):**

(1) ABUSE OR THREATENED ABUSE OF LAW OR LEGAL PROCESS

The term "abuse or threatened abuse of the legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

And lastly, I was unable to locate a specific definition for the term **"servitude"** within US code, so I will include the Merriam-Webster definitions:

- 1. a condition in which an individual lacks liberty especially to determine his or her course of action or way of life**
- 2. a right by which property owned by one person is subject to a specified use or enjoyment of another**

Supporting Arguments:

The forced investment in NewCo by Celsius creditors as proposed by the plan, with no mechanism by which to opt out, is clearly a case of "involuntary servitude". Debtor/plan sponsor propose to force me to contribute the fruits of my labor to a new start-up company without my consent, for the enjoyment of another. It makes no difference whether the "servitude", or fruits of my labor, occur in the past, present, or future. They still are still mine, and I do not consent to debtor/NewCo taking the fruits of my labor to stand-up a new enterprise for which they will profit handsomely, while I continue to be unable to enjoy the fruits of my labor and receive nothing in return to which I assign any value.

Debtor would argue that they are giving me equity in NewCo resulting in an exchange of value, or compensation for my claim. But, as stated above, I assign no intrinsic or economic value to

NewCo equity, and the assertion NewCo equity will in fact have economic value at some point in the future is speculative at best. **As such I would, and do, reject Debtor's offer to exchange the fruits of my labor for NewCo equity.** And to the extent that the Court approves the plan allowing this non-consensual, forced investment in NewCo to occur, the court has placed me in a state of "involuntary servitude".

Analogous Argument:

Let's suppose a group of investors set up a bank in Northern California during the mid-1800's to hold gold deposits on behalf of the surrounding miners toiling to prospect for gold. And the prospectors were experiencing great success on their claims, and the bank was very successful in attracting gold deposits from them.

One day word gets out that the bank executives had lied about holding the gold deposits in their vaults on the miners' behalf and had instead rehypothecated depositors' gold in a series of cascading failed investments, all the while lying about it and soliciting further gold deposits in an attempt to cover the loss. Predictably, this results in a bank run for gold withdrawals that the bank cannot cover, resulting in a "pause" of gold withdrawals, and eventually a bankruptcy filing.

The depositors of gold, now "creditors", are of course furious and just want what's left of the gold they had labored for returned to them. Bank executives have been criminally charged with fraud and misrepresentation and are in various stages of criminal proceedings. And what's left of the bank, along with government oversight, is trying to figure out an equitable manner of returning what's left of the gold to the miners.

Given this scenario, closely tracking with the unfolding of the Celsius bankruptcy, can one imagine that the solution that the bank/government oversight comes up with is to tell the creditors "we have around 63% of everybody's gold, but instead of giving it back to you we're going to give you back around 32% of your gold, use the rest of your gold to invest in a silver mine, and give you 31% of the value of your gold in stock/equity in the silver mine. Oh, and by the way, those percentages are based on the value of the gold at the bottom of the market, not the value when you actually deposited it, or the value today, or even the weight (in-kind) of gold that you deposited. How's that sound to everyone?"

This scenario sounds insane, and never would have happened 150 years ago, yet that is what the debtor is proposing, and the Court is considering today.

Moral Argument:

Our whole society and economic system is based on free trade. This implies that where there is a transaction of value between two parties, it is entered into voluntarily by both parties, with each making their own independent assessment of the value assigned to that which they hold versus that which they wish to trade for. If both parties find benefit in the exchange, then the trade occurs. There are of course legal exceptions for governments in which they can coerce an involuntary taking of value from a citizen without their consent for the greater societal good, such as federal income tax. But in the case of the proposed plan, a private party is advocating the involuntary taking of my property, without my consent for their own enjoyment, and to do so with the coercion and enforcement of the federal government. Not for the greater good of society, but for the profit of “NewCo”.

To sum it up I will quote **Frédéric Bastiat**:

“When plunder becomes a way of life for a group of men in a society, over the course of time they create for themselves a legal system that authorizes it and a moral code that glorifies it.”

It is clear to me that what is happening with this bankruptcy is the result of the evolution of a legal system which has gradually tilted toward the rich and powerful to the detriment of the common man, who is sometimes caught up in these proceedings, who cannot afford adequate legal representation. While the Court does it’s best to shepherd the proceedings according to the law, the system within which the Court is operating has itself become corrupted to the point that the common creditor cannot receive justice without the affirmative intervention of an honest Court to protect their rights.

Over 90% of creditors just want what’s left of their coins/dollars/gold back. Debtors will point out that well over 90% of those voting for the plan voted to accept. What they will not point out is that only around 13% of creditors voted at all, that voting to accept the plan includes the Orderly Wind Down provision as well (not as its own voting option...), nor will they acknowledge all of the coercion embedded in the ballot to discourage a “no” vote. Most creditors were afraid of the consequences of opting out of the plan.

Conclusion/Relief Requested:

I urge the Court to consider the arguments put forth in Mr. Schneider’s motion and to grant the requested relief.

I also urge the Court to consider the arguments put forth in this Joinder to Mr. Schneider's objection to plan confirmation.

I further beg the Court to pivot to an Orderly Wind Down, or alternatively, not approve any plan causing the forced investment of creditors' funds in a NewCo, absent a clean, non-discriminatory opt-out provision. These are the best options for avoidance of placing creditors in a position of "involuntary servitude" to debtor/NewCo.

Respectfully,

Michael D Windom

Celsius Pro Se Creditor

Celsius Account Holder [Class 2 Borrow / Class 5 Earn]

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